



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MGE - 175553

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 15, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Pierce County Department of Human Services regarding Medical Assistance (MA), a hearing was held on August 11, 2016, by telephone.

The issue for determination is whether the department correctly determined that the petitioner's house is an available asset that put her over the institutional medical assistance asset limit.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Pierce County Department of Human Services  
412 West Kinne Street  
PO Box 670  
Ellsworth, WI 54011

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Pierce County.

2. The petitioner and her spouse entered a nursing home on January 21, 2016.
3. On January 20, 2016, the petitioner's physician stated in writing that she intended to return home within six months.
4. The petitioner's house is worth \$49,000.
5. On February 22, 2016, the department notified the petitioner that she was eligible for institutional medical assistance as of April 1, 2016.
6. On March 22, 2016, [REDACTED] of the ADRC filed a form on the petitioner's behalf indicating she intended to disenroll from the Family Care Program. Mr. [REDACTED] indicated on the fax cover sheet that the petitioner "plans to stay in NH at Plum City Care Center."
7. On May 11, 2016, the department notified the petitioner that her institutional medical assistance would end on June 1, 2016, because her assets exceeded the program's limit. It made this decision after determining that her house was an available asset because neither she nor her husband intended to return home.

### DISCUSSION

A married person cannot receive institutional medical assistance if her "actually available" assets exceed \$3,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3m.e. An institutionalized person's home is not considered available if she "intends to return to the home and the anticipated absence from the home, as verified by a physician, is less than 12 months." Wis. Admin. Code, § DHS 103.06(1)(b)2. The department's policy exempts an institutionalized person's home if she "expresses...her intent to return to the home." If she can form intent but cannot express it, the agency is instructed to determine her intent through her written statements, her oral statements made before she was incapacitated, and reports of her authorized representative. *Medicaid Eligibility Handbook*, § 16.8.1.3.

The petitioner and her spouse entered a nursing home on January 21, 2016. The day before, their physician wrote a letter indicating that they intended to return home within six months. On February 22, 2016, the department notified them that they would be eligible for institutional medical assistance on April 1, 2016. They had been receiving Family Care benefits. On March 22, 2016, [REDACTED] of the ADRC filed a form for each of them indicating that they intended to disenroll from the Family Care Program. Mr. [REDACTED] stated on each of the fax cover sheets that the recipient "plans to stay in NH at Plum City Care Center." The department assumed this meant that they no longer intended to return home. On May 11, 2016, notified the petitioners that their institutional medical assistance would end on June 1, 2016, because their house, which was worth \$49,000, was now available and caused their assets to exceed the program's limit.

The petitioner and her spouse contend that the house remains an exempt asset because Mr. [REDACTED] was not their authorized representative. Neither the petitioner nor her spouse had a guardian or power of attorney and both remained capable of making their own decisions. And even if they needed help making a decision, they contend that Mr. [REDACTED] did not qualify as their authorized representative because he was not their legal guardian. As a result, they assert that their previously stated desire to return home remained in effect, their house remained exempt, and they should have continued to receive benefits in June 2016. (That is the only month in question because they regained their eligibility the next month by listing their house with a realtor.)

The facts as presented establish that the petitioner could express intent to return home without assistance from others. This means that under the policy, there was no need to consult anyone else concerning her intent. Still, nothing in the policy or administrative code indicates that once expressed, an intent to return home remains in effect if the evidence indicates that that is no longer the person's intent. While it was Mr.

████ and not the petitioner who indicated that she intended to remain in the nursing home, Mr. █████ was undoubtedly acting according to the petitioner's wishes when he requested that the agency end the petitioner's participation in the Family Care program. Family Care is meant for people who live in the community. *See* Wis. Stat. § 46.286. Because of this, the most reasonable explanation for the petitioner's decision to end Family Care benefits—and it was the petitioner's and not Mr. █████'s decision—is that she intended to remain in the nursing home. At that point, by her own actions, she indicated that she no longer intended to return home. Because she no longer intended to return home, her house became an available asset that caused her to exceed the medical assistance program's asset limit. Therefore, the county agency correctly determined that she was no longer eligible for the program.

### **CONCLUSIONS OF LAW**

The county agency correctly ended the petitioner's medical assistance benefits because her assets exceeded the program's limit when her house became available after she decided that she would no longer return to it.

**THEREFORE, it is**

### **ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of September, 2016

\s\_\_\_\_\_  
Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 14, 2016.

Pierce County Department of Human Services  
Division of Health Care Access and Accountability  
Attorney [REDACTED]